

Federal Maritime Commission

§ 502.92

[Office and post office address]

[Signature of attorney or agent]

[Post office address]

Date ———, 19—.

VERIFICATION

[See form for verification of complaint in Exhibit No. 1 to this subpart and § 502.112.]

CERTIFICATE OF SERVICE

[See § 502.114.]

EXHIBIT NO. 3 TO SUBPART E [§ 502.72]—  
PETITION FOR LEAVE TO INTERVENE

*Before the Federal Maritime Commission*

Petition for Leave To Intervene

—— v. —— Docket No. ——.

Your petitioner, ———, respectfully represents that he (she) has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I. That petitioner is [State whether an association, corporation, firm, or partnership, etc., as in Exhibit No. 1 to this subpart, and nature and principal place of business].

II. [Here set out specifically position and interest of petitioner in the above-entitled proceeding and other essential averments in accordance with Rule 72 (46 CFR 502.72).]

Wherefore said ——— requests leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

[If affirmative relief is sought, insert appropriate request here.]

Dated at ——, this —— day of ——, 19—.

Petitioner's signature]

[Office and post office address]

[Signature of agent or attorney of petitioner]

[Post office address]

VERIFICATION AND CERTIFICATE OF SERVICE

[See Exhibits Nos. 1 and 2 to this subpart.]

Subpart F—Settlement; Prehearing Procedure

§ 502.91 Opportunity for informal settlement.

(a) Parties are encouraged to make use of all the procedures of this part which are designed to simplify or avoid formal litigation, and to assist the parties in reaching settlements whenever it appears that a particular procedure would be helpful.

(b) Where time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity for the submission and consideration of facts, argument, offers of settlement, or proposal of adjustment, without prejudice to the rights of the parties.

(c) No stipulation, offer, or proposal shall be admissible in evidence over the objection of any party in any hearing on the matter. [Rule 91.]

(d) Any party may request, or the presiding officer may suggest, that a mediator or settlement judge be appointed to assist the parties in reaching a settlement. If such a request or suggestion is made and is not opposed, the presiding judge will advise the Chief Administrative Law Judge who may appoint a mediator or settlement judge who is acceptable to all parties. The mediator or settlement judge shall convene and preside over conferences and settlement negotiations and shall report to the Chief Administrative Law Judge, within the time prescribed by the Chief Administrative Law Judge, on the results of settlement discussions with appropriate recommendations as to future proceedings. If settlement is reached, it shall be submitted to the presiding judge who shall issue an appropriate decision or ruling.

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 38649, July 19, 1993]

§ 502.92 Special docket applications and fee.

(a)(1) A common carrier or a shipper may file an application for permission to refund or waive collection of a portion of freight charges where it appears

that there is (i) an error in the tariff of a clerical or administrative nature or (ii) an error due to inadvertence in failing to file a new tariff. Such refund or waiver must not result in discrimination among shippers, ports, or carriers.

(2) When the application is filed by a carrier, the Commission must have received prior to the filing of the application a new tariff which sets forth the rate on which refund or waiver would be based.

(3)(i) The application for refund or waiver must be filed with the Commission within one hundred eighty (180) days from the date of shipment and served upon other persons involved pursuant to subpart H of this part. When a rate published in a conference tariff is involved, the carrier or shipper must serve a copy of the application on the conference and so certify in accordance with Rule 117 (46 CFR 502.117) to that service in the application. A shipper must also make a similar service and certification with respect to the common carrier. An application is filed when it is placed in the mail, delivered to a courier, or, if delivered by another method, when it is received by the Commission. Filings by mail or courier must include a certification as to date of mailing or delivery to the courier.

(ii) The application for refund or waiver must be accompanied by remittance of an \$86 filing fee.

(iii) Date of shipment shall mean the date of sailing of the vessel from the port at which the cargo was loaded.

(4) By filing, the applicant(s) agrees that:

(i) If permission is granted by the Commission:

(A) An appropriate notice will be published in the tariff; or

(B) Other steps will be taken as the Commission may require which give notice of the rate on which such refund or waiver would be based; and

(C) Additional refunds or waivers shall be made with respect to other shipments in the manner prescribed by the Commission's order approving the application.

(ii) If the application is denied, other steps will be taken as the Commission may require.

(5) Application for refund or waiver shall be made in accordance with Ex-

hibit No. 1 to this subpart. Any application which does not furnish the information required by the prescribed form or otherwise comply with this rule may be returned to the applicant by the Secretary without prejudice to resubmission within the 180-day limitation period.

(b) Common carriers by water in interstate or intercoastal commerce, or conferences of such carriers, may file application for permission to refund a portion of freight charges collected from a shipper or waive collection of a portion of freight charges from a shipper. All such applications shall be filed within the 2-year statutory period referred to in § 502.63, and shall be made in accordance with Exhibit No. 1 to this subpart. Such applications will be considered the equivalent of a complaint and answer thereto admitting the facts complained of. If allowed, an order for payment or waiver will be issued by the Commission.

(c) Applications under paragraphs (a) and (b) of this section shall be submitted in an original and one (1) copy to the Office of the Secretary, Federal Maritime Commission, Washington, DC 20573-0001. Each application shall be acknowledged with a reference to the assigned docket number and referred for decision, either to a Special Dockets Officer or to the Office of Administrative Law Judges, at the discretion of the Secretary. The deciding official may, in his or her discretion, require the submission of additional information. Formal proceedings as described in other rules of this part need not be conducted. The deciding official shall issue an initial determination to which the provisions of § 502.227 shall be applicable. If the application is granted, the initial determination or, as may otherwise be applicable, the final decision of the Commission shall describe the content of the appropriate notice if required to be published, and shall designate the tariff in which it is to appear, or other steps that are required to be taken which give notice of the rate on which such refund or waiver is to be based. [Rule 92].

[49 FR 44369, Nov. 6, 1984, as amended at 53 FR 27861, July 25, 1988; 57 FR 3026, Jan. 27, 1992; 59 FR 59170, Nov. 16, 1994]